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In the Supreme

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On W
Oklahoma

BRIEF

August, 1981

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Writ of Certio

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SUM
ARG
I.

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C. The age of a defendant at the time he committed the crime in a capital case should be restricted to the role of a mitigating circumstance 42

II. The sentence of death imposed upon a person who was sixteen years old at the time of the commission of the murder was not disproportionate to the crime where the evidence revealed that the crime was an intentional murder of a law enforcement officer 45

III. Where the issue of whether the sentencing court committed error by making the statement that it would not consider petitioner's "violent background" to be a mitigating circumstance was never presented to or considered by the Oklahoma Court of Criminal Appeals nor set forth in petitioner's petition for a writ of certiorari before this Court, review of this contention is not appropriate, particularly since petitioner has failed to show that the court's action was "plainly unconstitutional" 53

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No. 80-5727

In the
Supreme Court of the U

OCTOBER TERM, 1

MONTY LEE EDD
Petitioner,

VERSUS

STATE OF OKLA
Respondent.

On Writ of Certiorari
Oklahoma Court of Crimi

BRIEF OF RESPO

OPINIONS BEL

The opinion of the Oklahoma
peals is reported at 616 P.2d 1159 (
211). The opinion of the District C
(A. 4-5 and 186-191) is unreported.

The opinion of the Oklahoma
peals affirming the order of the ju
the petitioner to stand trial as an a
P.2d 1340 (Okl. Cr. 1978), *cert. den*
order of certification of the juveni
unreported.

JURIS

The judgment of the O
peals was entered on Marc
hearing was denied on Sep
for Certiorari was filed on
diction of this Court rests

**CONSTITUTIONA
PROVISIO**

The Eighth Amendmer
tution provides as follows:

> "Excessive bail sh
> sive fines imposed, nor
> inflicted."

The Fourteenth Amend
stitution provides in pertin

> "All persons born
> States, and subject t
> citizens of the United
> they reside. No State
> which shall abridge t
> citizens of the United
> prive any person of li
> due process of law; no
> jurisdiction the equal

This case also involve
State of Oklahoma which
this brief: OKLA. STAT. AN
1974); OKLA. STAT. ANN. tit.
701.12, and 701.13 (West S

STATEMENT

On April 4, 1977, the p
sixteen-year-old white male
his fourteen-year-old friend
Gary Molt that he was runn
Molt to join him (A. 58). T
was leaving home because h
Vol. II, 064). Molt agreed t
turned to the Eddings' house
the petitioner was living w
mother (A. 50).

The petitioner sawed
shotgun in the basement of
Tr. Vol. II, 067). The petiti
gun and two other weapon
and a 30-30 rifle, into a red
C. Tr. Vol. II, 068). The
could use the guns if they

The two went from
where the petitioner picked
Rhonda Eddings, and her
Clevenger, at the high scho
left Joplin, Missouri, with t
wagen, Gary Molt sitting n
of the front seat and the sa
them near the emergency
were placed behind the rea
(A. 64) and the two girls

The group hea
souri and entering
entering Oklahoma
Creek County, Okl
up a hitchhiker (A
got into the passen
Gary Molt moved
(A. 51-52).

Shortly after
group stopped at a
state 44 (A. 52). A
Patrol vehicle park

The group rest
petitioner at the wh
on Interstate 44. A
the petitioner dropp
of the car and whe
momentarily swerv
and into a ditch
Johnson's watched
reported the violat
Crabtree, who was
185). Trooper Crab
incident (A. 185).

Trooper Crabt
thirteen (13) miles
Eddings observed
told the petitioner,
to Gary Molt, the
"mother fucking p

blow him away" (
the petitioner "w
(A. 34). Molt noti
enough to kill" (A
light for the car t

When the troo
the sawed-off shot
fied that Molt tw
(C. Tr. Vol. II, 03
conceal the gun b
from reaching it (
petitioner reached
(A. 90; C. Tr. Vol
ing off onto the sl
with one shell (A
he "was going to
sponse (A. 90).

After stoppin
of his car and mot
driver's side of th
rolled down his w
approaching office
Molt testified tha
trigger he told pet
and the others we
He said that Terry
"told him not to c
proximately six t

---

[1] Terry Clevenge
words were "If the fu

fired one
Trooper C
ground, bl

The p
ing the of
Terry Cle
(A. 91). T
rate of spe
off shotgu
ordered th
dow, whic

The p
have shot
94). He w
asked if h
know (A.

Motor
the turnpi
the scene
quiess saw
to alert la
(A. 46). T
bystander
pursue th
at speeds

Highw
motorist's
within mi
Crabtree
(A. 73). T

and atter
(A. 73).
Volkswag
forcemen
wagen ar
Vol. II, 0
occupant

The
were late
The sawe
was cock
tioner w
sheriff's
to arrive
the polic
would sh

Troo
titioner
Creek C
plaining
that the
the petit
actions i
tioner "
have sho
don't tu

On
titioner
Oklahom
The Dist
examine

tim (C. Tr. Vol. II, 023). Hoffman testified that t
of death was perforation of the heart due to a sin
gun wound in the chest (C. Tr. Vol. II, 025). H
that plastic wadding material generally found in a
shell was recovered from within the heart itself, a
numerous pellets (C. Tr. Vol. II, 026). The medic
iner testified that a .410 shotgun shell had entere
Crabtree's chest and that he died not instantly, b
a matter of minutes (C. Tr. Vol. II, 026).

The State next called as witnesses the other
cupants present in the petitioner's car when he sho
Crabtree. These persons testified to the events sur
the murder of the trooper. They also testified co
petitioner's demeanor and state of sobriety befor
and after the murder.

Terry Clevenger stated that the petitioner did
very much and did not seem upset (C. Tr. Vol
Gary Molt testified that there was no difference
tioner's appearance the day of the murder and
he appeared in court and that he did not observe
take any pills or drink any intoxicants (C. Tr. Vo
He stated that petitioner engaged in normal conv
with the others (C. Tr. Vol. II, 70).

Rhonda Eddings also testified that her brot
pearance was no different than it had been in
(C. Tr. Vol. II, 74, 86) and that she did not see
tioner or anyone else consume any drugs or alcoh

nothing unusual about his behavior prior to th
(C. Tr. Vol. II, 104). Thomas stated that after
ing, petitioner was panicky and was mumbling
gibly (C. Tr. Vol. II, 102).

Highway Patrol Trooper Joe Inman and Tro
neth Bailes testified concerning the threats ma
petitioner regarding other law enforcement offi
he was in custody in the Creek County Jail (C.
106-127).

The court then ordered that the petitione
mitted for mental observation at Eastern State
Vinita, Oklahoma (C. Tr. Vol. II, 129). This was
the concurrence of his attorney (C. Tr. Vol. II,

The petitioner's certification hearing resum
6, 1977. Stephen Dorn, the petitioner's juvenil
Missouri, then testified for the State concernin
tioner's past legal and behavioral problems. I
that the petitioner had been adjudicated as a
previously after committing four burglaries, b
entering and auto tampering (C. Tr. Vol. II
After being placed on probation, during whi
sulted with a psychologist (C. Tr. Vol. III,
petitioner was then charged in Juvenile Cour
box vandalism and with Assault with Intent t
Harm (C. Tr. Vol. III, 023). The petitioner w
to a group home and participated in a group
program there, consulting weekly with a psyc
Tr. Vol. III, 024-025). Later, while he was still

Vol. III, 027). On March 1, 1977, appro
prior to the murder of Trooper Crabtre
that petitioner had violated his probati
to Oklahoma where he was picked up
(C. Tr. Vol. III, 028).

Dorn further stated that the petitio
had a decreasing willingness to cooper
Tr. Vol. III, 039). He stated, ". . . as t
first got progressively worse. He was
from what we had to offer through th
Tr. Vol. III, 042). When asked on cross
petitioner's mental ability, Dorn not
sharp" (C. Tr. Vol. III, 061). He furth
petitioner was fearful of his father b
Vol. III, 053). Dorn concluded that the
Missouri had failed in its attempt to r
tioner (C. Tr. Vol. III, 070), stating tha
thing we knew to do" (C. Tr. Vol. III,

Dr. R. D. Garcia, the chief forer
Eastern State Hospital in Oklahoma, fo
normalities or neurological deficiencie
(C. Tr. Vol. IV, 076). He testified th
found that the petitioner knew the diffe
and wrong, had no remorse or grief ov
not amenable to rehabilitation and h
sociopathic personality (C. Tr. Vol. IV,
cia explained that he could not treat su
is characterized by conduct against soc
displays callousness, selfishness, immat

Dr. Garcia testified that petitioner was
not mentally ill . . . not insane" (C. Tr.

Dr. H. Brent Dietsche, a clinical
same hospital, agreed that the petitione
personality (C. Tr. Vol. IV, 031). Dr
stated that petitioner had the "intellectu
intellectual maturity," to realize and u
ference between right and wrong (C. Tr
Dietsche testified that petitioner had a
was "[j]ust about the range you usuall
personality" (C. Tr. Vol. IV, 31).

Don McAllister, an intake worker f
ment of Social and Rehabilitative Serv
study of the petitioner for certification,
was insufficient time to rehabilitate th
juvenile system (C. Tr. Vol. IV, 049).
a social worker with the same depart
concerning available juvenile facilities
Vol. IV, 55-84).

In his defense, petitioner called D
behavioral scientist, who interviewed
Creek County Jail (C. Tr. Vol. IV, 092
troubled home situation that the teena
(C. Tr. Vol. IV, 087). He testified th
there was such a thing as a sixteen-yea
not be rehabilitated and stated that
is no such thing as a bad boy, "just a
Vol. IV, 108).

(C. Tr. Vol. IV, 142-173). He stated never accepted his parents' divorce "certainly not disagree" with the op the petitioner had an antisocial per 6, 15). He testified that the petitio he did and "feels responsible for h 015). Dr. Gagliano further stated potentially dangerous to others as (C. Tr. Vol. V, 023). Dr. Gagliano evidence of violence in petitioner's Dr. Gagliano conceded on cross-exa that the petitioner knew right fro V, 022).

Subsequently, an order certi stand trial as an adult was entere Tr. Vol. VI, 003; O.R. 1-5). That d the Oklahoma Court of Criminal A *In the Matter of M. E.*, 584 P.2d 1 February 22, 1978. This Court deni tiorari in *Eddings* v. *Oklahoma*, 43

On May 8, 1978, the petitioner *contendere* in the District Court of Tr. 2-36). The sentencing proceedin and 17th, 1978, in the District Court State again presented testimony of as well as the testimony of Johnny witnessed the group throwing the

The defense presented testimon
Stephen Dorn (A. 104-130), Dr. H.
144), psychologist Richard Rettig
chiatrist Anthony Gagliano (A. 165
testified at the certification hearing

Dorn recited the petitioner's p
failure of the juvenile rehabilitative
the petitioner's family background.
titioner stayed with his mother u
fourteen years old (A. 109). He wa
due to the inability of his mother
The petitioner's father was more
tioner would rebel against the rul
father apparently was inconsistent
times resorting to physical conta
stated that in his opinion, the pe
home because of the harsh discipli
(A. 120). Dorn testified that the
tional problem that he knew of (A
logical testing during the time th
group home revealed that he was
(A. 124).

Dr. Dietsche again testified co
lating to the petitioner's mental st
fied that the petitioner tested high
and that in his opinion, the peti
personality (A. 136-137). He state
the intelligence of an adult" (A.

Dr. Rettig also testified a
background on the petitioner
as "antisocial" (A. 149). Re
pathic condition was develop
ingness" in his childhood (A
he stated that the petitioner
abuse (A. 160).

Dr. Gagliano also testifie
background. Gagliano state
antisocial disorder and never
responsibility (A. 171). Dr.
crazy. There is a sense of r
right and wrong" (A. 171). G
liano reiterated that "[t]here
boy is not crazy" (A. 174). Ga
the petitioner would not kill
was not safe and that fifteen
therapy would be required t

At the close of the hearin
sufficient evidence existed b
support the first aggravating
was heinous, atrocious or cru
"I find one part of the partic
with beyond a reasonable d
designed to inflict a high deg
indifference to the rights of P
The court further found tha
doubt that the crime was c

continuing threat to society
petitioner's age to be the o
it did not sufficiently "sc
stances that were found b
188-189). Accordingly, th
death (A. 189).

SUMMARY

Oklahoma has enacte
imposition of the death p
sixteen years old at the t
tentional murder. There a
which have statutes permi
penalty under those circu
tioner admits that the co
his position that a person
the death penalty. The
Court, rather than the sta
ological age at which a pe
alty has no support in a
theories proscribing cruel
Court has in the past refu
doctrine of criminal respo
U.S. 514 (1968), and Okl
of deciding at what point
maturity at which he sho
ble for actions warrantin

and *Lockett* v. *Ohi*
the age of the pers
used in determinin
alty in a particular

In view of the
that he is the victi
punishment, a dispr
ished criminally fo
that a defendant ha
bility to be treated
should not be overt
not have found bey
to be executed had
ability as defined b

The petitioner
tion of the death
stricken as being "
portionate, irrespec
an absolutely prec
Oklahoma's positio
lated murder of a
highways and that
tification and sente
mining that this ind
he should be held
ceive the death pe

The petitioner
Court of Criminal
the sentencing co
"consider the fact
constituted error i
Ohio, 438 U.S. 586
the youth of the pe
the remark, when
evidence presented
plain error.

**A STATE MAY
DEATH PENAL
TEEN YEARS
SION OF THE
THE DETERMI
SUPPORTED I
TIONER INTE
OF MURDER.**

**A. The objective
states preclud
is attempting
ment upon th**

The petitione
to adopt as an as

Court to s
a defendan
alty regard
for his act.

With r
Amendmen
burden res
of the repr
will presun
legislature.
Furthermo
Justice Wh

". . .
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A revi
cution of p
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tory schem
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most impor

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years old
is one pr
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states wh

In *Co*
the fact t
States at
death wh

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[2] ALA.
ARIZ. CONS
ARK. STAT.
(Supp. 197
CONN. GEN
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ANN. §§ 3
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CODE §§ 1
31-6-2-4, 3
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§ 3-804(d
(Supp. 198
1980); M
MONT. REV
(1979); N
NEV. REV.
GEN. STAT
ANN. tit.
STAT. ANN

ment officer. See *(Harry) Roberts* v. *Louisiana*, 4
633, 636 (1977). Furthermore, petitioner does not
the manner in which Oklahoma has chosen to exec
titioner, death by a lethal injection of drugs. OKL
ANN. tit. 22, § 1014 (West Supp. 1980). Cf. *Wilke*
Utah, 99 U.S. 130 (1879); *In re Kemmler*, 136 U
(1890).

With regard to the second classification, petitior
contend that the imposition of the death penalty
present case violates disproportionality principles a
argument constitutes Proposition II of his brief.

Finally, the imposition of the death penalty upo
son who was sixteen years old does not fit within t
scription of *Robinson* v. *California*, 370 U.S. 660
which prohibited the states from punishing an in
based upon his status or condition. Petitioner's ar
occasionally seems to fall within this principle s
relies heavily on his juvenile status to protect hi
capital punishment, but petitioner is not being puni
Oklahoma for being a juvenile. He is being punis
the act of intentionally killing a law enforcement

The imposition of the death penalty in the pres
also does not fall within any other Eighth Ame
theory which has been considered by this Court. *L*
ex rel. Francis v. *Resweber*, 329 U.S. 459 (1947)
execution after first attempt failed); *Caritavito* v. *Ca*
357 U.S. 549 (1958), and *Solesbee* v. *Balkcom*, 33
(1950) (execution of person alleged to be prese

This Court has been reluctant to impose inflex
on the states' criminal justice procedures. See *
Wingo, 407 U.S. 514, 522-25 (1972). With regard
Amendment judgments, this Court has refused t
engaged in "the basic line-drawing process tha
eminently the province of the legislature. . . .". *R*
Estelle, supra, 445 U.S. at 275. In *Rummel*, Justi
quist set forth the reasons why the Court was abl
the line in *Coker* v. *Georgia*, supra, stating:

> "Since Coker involved the imposition
> punishment for the rape of an adult fe
> Court could draw a 'bright line' between th
> ment of death and the various other permuta
> commutations of punishments short of that
> sanction. For the reasons stated by Mr. Just
> art in Furman, see supra, at 272, 63 L Ed 2
> this line was considerably clearer than wou
> constitutional distinction between one term
> and a shorter or longer term of years." 445 U

Against the common-law precedent, the arra
which have chosen the age of sixteen or below
ultimate criminal responsibility attaches, and th
of a "bright line" with which to guide this C
Coker v. *Georgia*, supra, the petitioner asks this
raise this minimum age to eighteen, and bases his
essentially upon "human decency" principles. A
foundation for his position, the petitioner sets for
ity such as the Twenty-Sixth Amendment to t
States Constitution, statutes relating to marriag

power as a state to determine the appropri
inal responsibility for such an act as co
petitioner, is not, and should not, be limi
thority and that previous decisions of t
preting the Eighth Amendment allow O
legislative and judicial judgment.

Nothing in the wording of the Twent
ment or its legislative history remotely s
states of this country surrendered their ri
the appropri‘e age for criminal responsibi
tion of that Amendment. If anything, the l
of this Amendment reflects a recognition
maturity of young adults in American soci
for supportive of Oklahoma's position in
that the states should have the flexibility
logical developments and the effect of
criminal justice systems.

In her testimony before the Senate S
Constitutional Amendments of the Senate
mittee, Dr. Margaret Mead, who testified
Twenty-Sixth Amendment, stated that toda
"are not only the best educated generati
ever had, and the segment of the populat
educated than any other group, but also
mature than young people in the past."
26, 92nd Cong., 1st Sess. (1971), reprinte
Code Cong. and Ad. News 931, 934. Dr.
also noted that "[t]here is no magic to th

excerpt from the floor debate of Repres
Poff, one of the primary spokesmen in fav
ment during floor debate in the House,

> "Moreover, the proposed amendme
> lish that age qualifications for votin
> 18. It does ban age qualifications ab
> It does not ban age qualifications be
> Thus, a State legislature could lowe
> for elections held within the State to
> And so long as the Supreme Court's
> gon versus Mitchell stands, the Con
> the voting age for so-called Federa
> age below 18." 117 Cong. Rec. 7535

It would be an ironic application of
Amendment to hold that passage of the
locked the states in at the age of eighte
the determination of the age of criminal
leaves the states free to lower their v
choose.

With regard to the recitation of the
the treaties referred to, and the laws of
garding the death penalty, the State c
response than to quote the statement
in *McGautha* v. *California,* 402 U.S. 18
in *Lockett* v. *Ohio,* 438 U.S. 586, 632-33
J., concurring in part and dissenting in

> " It may well be, as the Ameri
> and the National Commission on

these cases, does not guarantee
are the best of all worlds, or
most enlightend ideas of stude
ence of criminology, or even t
to the individual predilections
Court. See Spencer v Texas,
2d 606, 87 S Ct 648, 40 Ohio Op
Constitution requires no more th
conducted and that guaranteed
scrupulously respected." 402 U

This Court has repeatedly reco
not act as judges as we might as
Georgia, supra, 428 U.S. at 175 (Stew
ion), and that the Constitution has
"roving commission" to impose up
notion of enlightened policy. *Rumm*
U.S. at 285 (Stewart, J., concurring)
of individual Justices should not b
Amendment judgments. *Rhodes* v. C
49 U.S.L.W. 4677, 4679 (U.S. June
Georgia, supra, 408 U.S. at 405-406
ing). Additionally, this Court has
decision by the Supreme Court "tha
is impermissible cannot be reverse
tional amendment." *Gregg* v. *Gorgia*

In *Barker* v. *Wingo*, supra, 407
Court rejected a suggestion that it
period within which a defendant m
Noting that such a rule was recom
can Bar Association, the Court stat

than in the adjudicative proce
confine our efforts. We do n
rules for the States, except v
Constitution. We find no const
ing that the speedy trial right
a specific number of days or
course, are free to prescribe a
sistent with constitutional stan
must be less precise". 407 U.

There likewise is no constitutional
Court can rely in selecting the ch
teen as the lowest age at which a
death penalty.

**B. The legislature of a state is th
establishing guidelines for dete
sponsibility and accountability a
supportive of such a finding in
State should be allowed to imp
for an act of intentional murde**

The complexities involving t
sanctions for juveniles also weigh h
setting a fixed line beneath which
in determining what is the prope
death penalty in a particular case.
tween maturity levels of individu
viously noted by Justice Powell i
Michael C., 442 U.S. 707 (1979), v

"Minors who become embr
from the very young up to t

> than an adult. As the C
> [citation omitted], the
> be exercised in a partic
> include the minor's age
> vironment, education, e
> and, of course, any prio
> U.S. at 734, n.4.

The adoption of the "tota
regarding the admissibility o
majority in *Fare* is in itself a
the differing types of juvenile
front. The majority in *Fare* s
imposing rigid restraints on
with an experienced older juv
record who knowingly and i
Amendment rights and volu
tion." 442 U.S. at 725-26.

In the *President's Comm*
and Administration of Justice
Delinquency and Youth Crim

> ". . . It is recognized
> juvenile courts are ha
> while some adults older
> level are emotionally a
> mature individuals. . .

and later,

> "No chronological ag
> cal or entirely homoge

judgment with regard to cert
is more supportive of the S
required the states to establi
can demonstrate that she i
enough to make the abortio
the holding in *Fare* v. *Mich*
sixteen-year-old juvenile wh
permission to see his probati
to a murder), supports the co
be given the freedom to mak
sixteen-year-old persons ar
criminally responsible for th
and that the death penalty n
ment in a particular case.

The existence of certi
statutes in various states, is
necessity of making individ
criminal responsibility in ca
This Court has noted that
jurisdictions permits transfe
Jones, 421 U.S. 519, 535 (19
linquency Act, 18 U.S.C. §
provision for sixteen and se
U.S.C. § 5032. Certificatio
chronological age of an offe
and arbitrary line to draw
criminal behavior.

numerous instances wh
sensitive to the age c
reduced the death sent
titioner, p. 28, n.52).
162, 273 N.E.2d 829 (1
and seventeen-year-old
records); *Commonwea*
241 (1959) (modifying
of circumstances surr
background); *Commo*
A.2d 44 (1961) (same
"three young men" a
constitute a barrier to
Ridge v. *State*, 28 Okl.
modified the death sen

Petitioner also im
young persons require
imposed on any. How
Howard v. *Fleming*,
leniency in one case d
ishment in another ca
Georgia, supra, 428 U.

While the petition
rent statistics show th
sons is accelerating at

[4] The F.B.I. Uniform C

that this Court sho
based upon the na
that under a repu
elected representa
wide discretion in
the citizens who l
dictions. As this
432 U.S. 197:

> "It goes wi
> with crime i
> than it is of
> fornia, 347 U
> (1954) (plur
> lightly const
> the administ
> 432 U.S. at 2

The setting b
logical age for w
penalty would for
ognition that the a
Supreme Court ma
not be made in th
Georgia, supra, 42

Other factors
lative bodies to re
American society.

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[4] (Continued)

Judiciary of th
S. 114, which
capital punishr
1st Sess., 127
most notable a
of the death pe
onage and the
President, head
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causing the de
Of particular
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nent part:

> "(g)
> a sentenc
> the follo
> but are
>
> "(
> of age
> p. B-4)

Therefore, if e
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In *Lela*
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Delaware, 4
432 U.S. 19
the present
to impose a
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sanity involv
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The Court
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In *Pow*
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U.S. 660 (19

[5] (Continued

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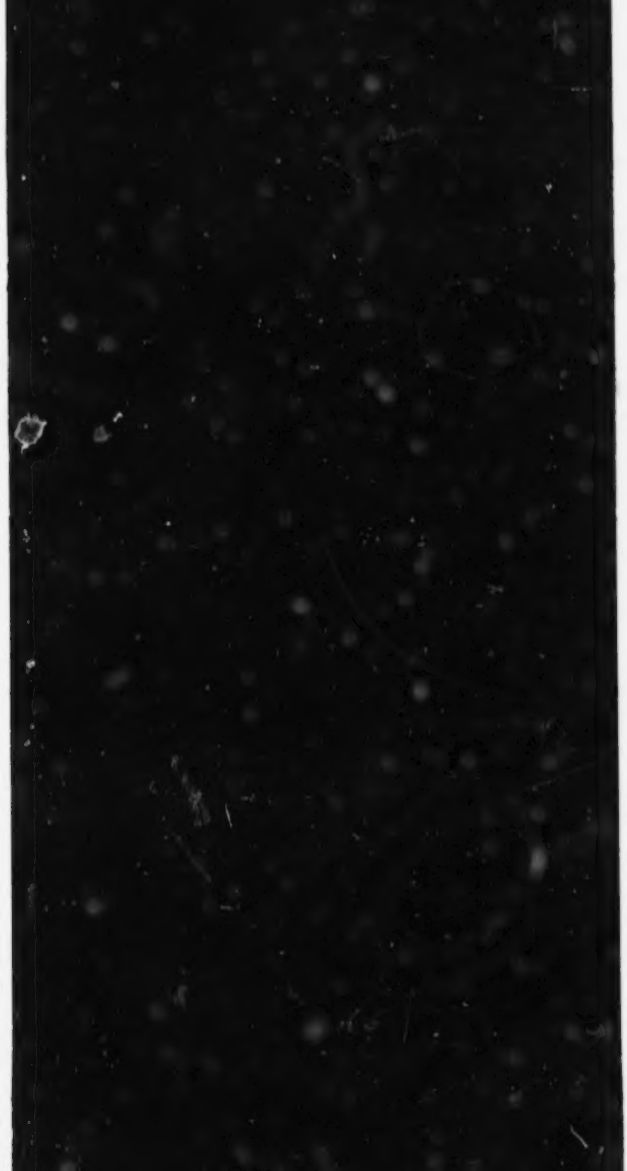

to the stopping of the petitioner by the trooper, the p
tioner stated, "[i]f the fucking pig hassles me I'll sh
him" (A. 96). The evidence is uncontroverted that p
tioner was not intoxicated or on drugs at the time of
murder. Even petitioner's own psychiatrists made no cl
that he was insane. After being stopped, the petitio
killed the trooper with a blast to the heart (A. 21) a
the others in the car had moved the guns away from
(A. 55, 65) and attempted to dissuade him from shoo
the trooper (A. 55). After the shooting, petitioner dr
down the interstate highway at a high rate of speed, ej
ing the spent shell, apparently reloading and cocking
gun (A. 75; C. Tr. Vol. II, 117), and then throwing it
the other guns out the window (A. 34). After being s
ped, petitioner followed directions to lie on the ground
Tr. Vol. II, p. 61). The petitioner never expressed rem
for the killing (C. Tr. Vol. III, 079) and made threats
cerning law enforcement officers on two other occas
(A. 77, 82).

Furthermore, Oklahoma made a careful and thor
determination that the petitioner was accountable fo
intentional act of murder. At the certification hearin
other occupants of the vehicle from which petitioner
the fatal shot testified fully concerning the act itself
the petitioner's attitude and conduct before and afte
murder. The petitioner's juvenile officer from Missour
tified concerning petitioner's prior juvenile record (w
included a charge for Assault with Intent to do B

sonally examined petitioner, testified that he k
difference between right and wrong (C. Tr. Vol.
A clinical psychologist testified that petitioner ha
tellectual maturity to understand what he had
Tr. Vol. IV, 32-33). The petitioner himself calle
ologist from a local university and a psychiatri
upon this testimony, the juvenile court certified
tioner to stand trial as an adult and filed a part
order specifying the reasons in support of that
(O.R. 1-5).

Under the Oklahoma law which was in effe
time, 1974 OKLA. SESS. LAWS 570, ch. 272, § 2[7] (
A), the juvenile judge was required to consider
guidelines in determining whether a juvenile s
certified to stand trial as an adult. The judge was
to "certify such child capable of knowing right fro
and to be held accountable for his acts . . .".
vision was complied with in the present case and
nile judge conducted an extensive hearing and
cific reason for his ruling that the petitioner shou
accountable for his acts.

The petitioner entered a plea of *nolo contend*
charge of Murder in the First Degree and an
sentencing hearing was conducted in which he w
to introduce all evidence he presented, including
mentioned juvenile officer, clinical psychologist
chiatrist.

In its opinion affirming petitioner's convict
lahoma Court of Criminal Appeals held that
dence tends to show that [the petitioner] knew
ence between right and wrong at the time h
trigger, and that is the test of criminal resp
this State. *Gonzales* v. *State*, Okl. Cr., 388 P.2d
(A. 207-208).

The rule of criminal responsibility in Ok
also set forth in *Hair* v. *State*, 532 P.2d 72,
1975), which noted that the "well settled" tes
responsibility for committing an act which is
be a crime is fixed at the point where the de
mental capacity to distinguish between right a
applies to a particular act, and to understan
and consequences of such an act."

The evidence presented was more than
support the state court's decision that the p
accountable for his actions and that he acted
aforethought." In *Jackson* v. *Virginia*, supra,
(1979), this Court held that in federal habeas
ceedings, federal courts were required to re
court conviction to determine whether, when
light most favorable to the prosecution, a ratio
could have found the defendant guilty beyond
doubt under the applicable state law. The
Jackson was convicted of first degree murde
ginia state law. The factual issue in the case

premeditation." 443 U.S. at 324. The C
jected the suggestion that the standard
invite intrusions upon the power of th
criminal offenses and stated:

> "Quite to the contrary, the stan
> plied with explicit reference to th
> ments of the criminal offense as def
> 443 U.S. at 324, n.16.

See also *Moore* v. *Duckworth*, 443 U.S.
this Court held that the Indiana state la
determination whether the evidence wa
the *Jackson* v. *Virginia*, supra, standar

The record in this case fully support
ings that the petitioner was accountable
adult. The deference which this Court
decisions regarding the substantive crim
intent should apply to a state finding c
which, if anything, is a more sophistic
that regarding intent. While intent gene
accused's mental state at the time of the
crime, the "accountability" of a person
actions may involve the weighing of s
physical development, prior criminal rec
vironment. Indeed, the eight (8) statuto
the juvenile judge in the present case w
sider demonstrate the complexity of the

The State urges this Court to adopt
ginia, supra, standard for reviewing its f

inally responsible for his actions sho
a finding that, under applicable state
record in the light most favorable to
tional factfinder could not have found
beyond a reasonable doubt.

The State submits that the dete
ability falls within the dicta of Mr. Ju
v. *Chapman*, ... U.S. ....., 49 U.S.L.W.
15, 1981), who stated, in the context
courts' responsibility for applying th
to state prison conditions, as follows

> "In discharging this oversigh
> ever, courts cannot assume that
> prison officials are insensitive t
> the Constitution or to the perple
> lems of how best to achieve t
> function in the criminal justic
> justly, to deter future crime, an
> persons to society with an imp
> useful, law-abiding citizens."

The petitioner in effect urges the
"perplexing sociological problems"
supra) of criminal accountability
line" (*Rummel* v. *Estelle*, supra, 44
age of eighteen and would have thi
Constitution commands that persons
time of the commission of the crime
mune from the penalty of death. T
simple solution, though not necessa
complex subject.

chronological age of criminal re
requiring over half of the states t
mum they have set. However,
moved away from the heavy relia
such as were used in *In re Gaul*
Streib, *From Gault to Fare and S*
preme Court Reliance on Delinq
dine L. Rev. 801 (1980). The de
studies in determining constitut
tent with the concept that Eight
"should be informed by objectiv
possible extent." *Coker* v. *Georg*
Reliance on sociological data is a
subjective viewpoint, since socio
any number of perspectives. In
this Court noted that the fact th
have disagreements with regard
inforced the Court's conviction th
toward lighter, discretionary sen
and its sustaining force in the le
eral courts." 445 U.S. at 283, 28

The State contends that soc
productive when presented to a
sideration in formulating an ap
ward crime, delinqency, punishm
society. The recognition that di
serve differing treatment by th

C. The age of a defendant a crime in a capital case sh of a mitigating circumsta

In a capital case in Okl to present evidence as to "a OKLA. STAT. ANN. tit. 21 § 70 fore the sentence of death is find the existence of one stances beyond a reasonable outweighed by one or more m STAT. ANN. tit. 21 § 701.11 (tencing is by jury, the vot STAT. ANN. tit. 21, § 701.11 (W 617 P.2d 588 (Okl. Cr. 1980)

In the present case, the found the age of petitioner t but that it did not outwei cumstances which were fou sonable doubt (A. 187-188).

This Court has never sidered to be more than a *Woodson* v. *North Carolina*, required the states to allow sider "the character and rec and the circumstances of th at 636. In *(Harry) Roberts* 633 (1977), the Court appli

". . . Circumsta
fender, the absenc
fluence of drugs, a
turbance, and eve
which the offende
moral justification
of mitigating facts
a peace officer and
other jurisdictions.

In *Lockett* v. *Ohio*,
validated an Ohio law w
considering age to be a
at 604. This is as far as
eration of the proper re
offender and the imposi
petitioner in his brief c
that the age of a defend
imposing punishment (
Gregg v. *Georgia*, supra,
that a reading of that o
not support such a conte
or *Lockett* suggests tha
than any other mitigatin
sented by a defendant.

In *Bell* v. *Ohio*, 438
was sixteen years old a
the death penalty. This
to its holding in *Locket*

was no suggestion i
be given any more c
factor.

The age of a pe
which is a "suspect
ysis of Fourteenth
Board of Retirement
v. *Bradley*, 440 U.S
supra, 408 U.S. 238,

Nothing in the
son's chronological
factor for the sente
posing sentence. As
with the sentencer's
making the decisio
death, and if the ev
defendant is accou
law, the sentence s

**THE SENTENC
SON WHO WA
OF THE COM
DISPROPORTI
EVIDENCE RE
INTENTIONAL
OFFICER.**

In his second
imposition of the
constitute an exc
in view of the "
(brief of petition

This Court
proportionality te
noted that *Coker*
since *Weems* v.
the Supreme Cou
invalidate a punis
ishment Clause.[8]
in which this doc
statute. Cf. *Grah*
O'Neil v. *Vermo*

An analysis
principle necessit
ishment is "gross
crime. *Gregg* v.

Estelle, sup
the punishm
by the peti

The cr
tentional ta
to say that
Furman v.
concurring)
v. *Georgia*,
the reprehe
compare wi
the present
ious posses
self-evident
Coker, supr
and one w
mankind fi

Furthe
tentional k
is not a sit
accomplice
imposition
this Court.
(White, J.,
637 (1978)
101 S.Ct. 1
companions
Crabtree (

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reached
shotgun
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crime at
that it h
"so griev
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supra, 42
to civiliz
upheld b
v. *Florid*
State, 31
(1976).

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Society has a special interest in protecting certa
dividuals who may be exposed to danger more than
bers of that society generally. The previously ment
S. 114 goes so far as to make it a capital offense fo
duct which comes "dangerously close" to causing the
of the President of the United States. Obviously,
dents as well as police officers are vulnerable to death
gunshot wounds.[9] If society makes the determinatio
both groups should receive special protection by w
the imposition of the death penalty upon their assa
this Court's holding in *Roberts* v. *Louisiana*, supra,
ports the view that this judgment should be uphel

The petitioner also urges as a basis for his propo
ality argument that his emotional background shoul
vent his receiving imposition of the death penalty.
ever, *Lockett* v. *Ohio*, supra, and *Bell* v. *Ohio*, supra
held that a defendant should be permitted to presen
dence concerning his mental composition as a miti
circumstance. The State has previously set forth in
the facts relied upon by the juvenile court, the sent
court and the Oklahoma Court of Criminal Appeals
termining that the petitioner was accountable for
tions. Furthermore, while the petitioner states that th
contradicted" testimony of the chief forensic psych
of the state hospital was that petitioner's mental ag
"approximately . . . fourteen years three months [to]
teen years six months" (brief of petitioner, p. 60),
closer look at the record puts this statement in its c

The test given by the psychologist was the Wec
Adult Intelligence Test (A. 134-135). Dr. Dietsche tes
that the mental age concept under that test had "no r
ing" because "they have reached their maximum a
fifteen, and so there is no point considering a menta
of someone under sixteen" (A. 134).

Dr. Dietsche also stated that petitioner had an I
88, which was in the normal range for a sociopath (
Vol. III, 031) and that in his opinion, petitioner "ha
intelligence of an adult" (A. 136).

The petitioner requests this Court to take into ac
the fact that petitioner's "act stemmed in large part
the emotional deprivations of his chaotic childhood"
quotes extensively from expert findings concerning t
fect of emotional trauma on young persons (brief of
tioner, pp. 60-61). However, the descriptions set forth
apply to many criminals.[10] These arguments wou

---

[10] The petitioner exhibited the basic characteristics of a perso
an antisocial personality. In the *American Psychiatric Association
nostic and Statistical Manual of Mental Disorders* (2nd ed. 1968
personality disorder is described as follows:

> "This term is reserved for individuals who are basically u
> ized and whose behavior pattern brings them repeatedly into
> with society. They are incapable of significant loyalty to indi
> groups, or social values. They are grossly selfish, callous, irre
> ble, impulsive, and unable to feel guilt or to learn from exp
> and punishment. Frustration tolerance is low. They tend to
> others or offer plausible rationalizations for their behavior.
> history of repeated legal or social offenses is not sufficient to
> this diagnosis. *Group delinquent reaction of childhood (or*

more properly presented to the sentencing auth
the legislature. For this Court to consider the
"chaotic childhood" in applying the constitutiona
of Eighth Amendment proportionality would d
volve this Court in the sentencing process of ev
who receives the death penalty.

The present case presents a factual and lega
in which no "bright line" exists which could
require this Court to begin making individual
decisions in virtually every capital case. See
Georgia, supra, 446 U.S. at 443 (Burger, C.J., d
In an age where persons under the age of ei
capable of the most heinous types of crimes,[11]
judgment on the punishment selected for a pers
liberately murdered a highway patrol trooper o
ways is not "grossly disproportionate" in violatio
Amendment principles.

III.

WHERE THE ISSUE OF WHETHER THE ING COURT COMMITTED ERROR BY MA STATEMENT THAT IT WOULD NOT CON TITIONER'S "VIOLENT BACKGROUND" MITIGATING CIRCUMSTANCE WAS NE SENTED TO OR CONSIDERED BY THE C COURT OF CRIMINAL APPEALS NOR S IN PETITIONER'S PETITION FOR A WR TIORARI BEFORE THIS COURT, REVIEW CONTENTION IS NOT APPROPRIATE, LARLY SINCE PETITIONER HAS FAILED THAT THE COURT'S ACTION WAS "PL CONSTITUTIONAL."

Petitioner contends that the sentencing ted "plain error" subject to review by thi Rule 34.1, *Rules of the Supreme Court of the* when it stated, during the sentencing of pe could not "consider the fact of this young background" (A. 189). The remark is as fo

> "And I want Mr. Baker, and Mr. Ed and all concerned persons to know, in case I have given very serious consi youth of the Defendant when this p was committed. Should I fail to do would not be carrying out my duty. hand, the Court cannot be persuaded youthfulness of the fact that the you years old when this heinous crime Nor can the Court in following the la ion, consider the fact that this youn

condition of mitigation — or in a
act that was committed.

"So not finding any mitigation o
fulness, and failing to find tha
softened the aggravating circumst
has found beyond a reasonable d
no alternative in this case oth
Monty Lee Eddings to death."

The petitioner claims that the alle
of this Court's decision in *Lockett* v.
(1978), but admits that this contentio
to the Oklahoma Court of Criminal A
that court in its decision affirming the
tion or mentioned in the Petition fo
filed with this Court (brief of petitio

In *United States* v. *Atkinson*, 297
the plain error rule was set forth as

"In exceptional circumstances,
cases, appellate courts, in the pu
their own motion, notice errors
tion has been taken, if the erro
they otherwise seriously affect t
or public reputation of judicial

See also Stern & Gressman, *Supreme*
(5th ed. 1978), at 460, and *Wood* v. *G*
67 L.Ed.2d 220, 226, 101 S.Ct. 1097, 1

In *Beck* v. *Alabama*, ... U.S. .....
S.Ct. 2382 (1980), this Court did re

sidered the matters raised in the
The Court held that review of peti
proper since the allegations had bee
bama courts "in some fashion." Thi
Beck was a case in which the death
in a plainly unconstitutional manne

In the present case, the State
that the contention was not raise
Oklahoma Court of Criminal Appeal
to demonstrate that he has proper
to the Oklahoma courts. See *Street*
576, 581-582 (1969). *Cf. Vachon* v
U.S. 478 (1974), where this Court
the state had not proven that petiti
tarily and intentionally" and petitio
at the trial and reversal at the ap
ground that the state had produce
this requirement. In the present
appellate brief contained no argume
that the sentencing court failed to c
gating circumstance.

This case does not present a sit
has proceeded in a manner which
tional." *Beck* v. *Alabama*, supra.
sentencing court is ambiguous, but
be drawn is that the court did n
juvenile record and family life to
stance. To adopt petitioner's reason

by the evidence of petitioner's
Constitution requires that he s
cifically holds that the senten
to "exclude, as irrelevant, e
defendant's character, prior re
offense." 438 U.S. at 604, n.1

The Oklahoma Court of
the petitioner's claims concern
lems as follows:

> "The petitioner also a
> time of the murder. He
> in saying he was sufferi
> and emotional disorders,
> actuality an inevitable
> raised. There is no dou
> personality disorder. Bu
> show that he knew the
> wrong at the time he pu
> the test of criminal resp
> *zales* v. *State*, Okl.Cr., 3
> same reason, the petitio
> in explaining why he b
> it does not excuse his

Under Oklahoma law a
evidence as to "any mitigatin
ANN. tit. 21, § 701.10 (West
case the sentencing judge all
into evidence everything he
convinced that the petitioner'

cumstance (A. 188-89). He
suade the court that other
mitigating. The remark b
sidered to constitute a *Loc*

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The judgment of the C
peals affirming the sentence
court should be affirmed.

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APP

STATUTORY

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(a) Except as
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nothing in this a
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nance.

(b) If a child
sult of an offense
ted by an adult,
guidelines:

1. The seriousn
munity;

2. Whether the
aggressive, violen

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(c) Pri
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§ 701.9—P

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OKLA. STAT. A

§ 701.10—

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APPENDIX B

§ 3562A. Sentencing for capital offenses

(a) Hearing Required.—A person shall be subje to the penalty of death for any offense against the Un States only if a hearing is held in accordance with section.

(b) Notice by the Government.—Whenever the G ernment intends to seek the death penalty for an off for which one of the sentences provided is death, the torney for the Government, a reasonable time before or acceptance by the court of a plea of guilty, shall and file with the court, and serve upon the defendar notice (1) that the Government in the event of convic will seek the sentence of death, and (2) setting forth aggravating factor or factors which the Government seek to prove as the basis for the death penalty. The c may permit the attorney for the Government to amend notice for good cause shown.

(c) Hearing Before Court or Jury.—When the torney for the Government has filed a notice as requ under subsection (b) and the defendant is found guil or pleads guilty to an offense for which one of the sente provided is death, the judge who presided at the tri before whom the guilty plea was entered, or any judge if the judge who presided at the trial or before w the guilty plea was entered is unavailable, shall cond separate sentencing hearing to determine the punish to be imposed. The hearing shall be conducted—

(1) before the jury which determined the d dant's guilt;

(2) before a jury empaneled for the purpose o hearing if—

(C) the jury which determined the def
guilt has been discharged for good cause;

(D) after initial imposition of a sentenc
this section, redetermination of the sentenc
this section is necessary; or

(3) before the court alone, upon the motic
defendant and with the approval of the Gov

A jury impaneled pursuant to paragraph (2) of
section shall consist of twelve members, unless, at
before the conclusion of the hearing, the parties
with the approval of the court that it shall consi
number less than twelve.

(d) Proof of Aggravating and Mitigating F
Notwithstanding Rule 32(c) of the Federal Rules
inal Procedure, when a defendant is found guil
pleads guilty to an offense for which one of the
provided is death, no presentence report shall be
In the sentencing hearing, information may be
as to any matter relevant to the sentence and sha
matters relating to any of the aggravating or m
factors set forth in subsections (g), (h) and (i)
other mitigating factor. Information presented ma
the trial transcript and exhibits if the hearing is
fore a jury or judge not present during the tr
other information relevant to such mitigating or
ing factors may be presented by either the Gover
the defendant, regardless of its admissibility u
rules governing admission of evidence at crimi
except that information may be excluded if its
value is substantially outweighed by the danger
prejudice, confusion of the issues, or misleading
The Government and the defendant shall be per
rebut any information received at the hearing

death. The Government shall open the argur
defendant shall be permitted to reply. The G
shall then be permitted to reply in rebuttal. T
of establishing the existence of any aggravatin
on the Government, and is not satisfied unless
beyond a reasonable doubt. The burden of estab
existence of any mitigating factor is on the defe
is not satisfied unless established by a preponder
information.

(e) Return of Findings.—The jury, or if
jury, the court, shall consider all the informatio
during the hearing. It shall return special findi
fying whether or not any mitigating factors or
vating factors set forth in subsection (g), (h),
been found to exist. A finding of such a factor
shall be made by unanimous vote. If, in the
offense of treason or espionage, no aggravating
forth in subsection (h) is found to exist, or, in
any other offense, the aggravating factor set fo
paragraph (i)(1) is not found to exist or the
factor set forth in subparagraph (i)(1) is fou
but no other aggravating factor set forth in sub
is found to exist, the court shall impose a sent
than death, authorized by law, If, in the case o
of espionage or treason, one or more of the
factors set forth in subsection (h) is found
in the case of any other offense, the aggravatin
forth in subparagraph (i)(1) and one or more
aggravating factors set forth in subsection (i) a
exist, the jury, or if there is no jury, the court
consider whether the aggravating factor or fa
to exist sufficiently outweigh any mitigating fa
tors found to exist, or in the absence of mitiga
whether the aggravating factors are themselv
to justify a sentence of death. Based upon th

(f) Imposition of Sentence.—Upon
sentence of death is justified, the court s
defendant to death. Otherwise the cour
sentence, other than death, authorized b

(g) Mitigating Factors.—In determ
sentence of death is to be imposed on
following mitigating factors shall be co
not exclusive.

(1) the defendant was less than
age at the time of the crime;

(2) the defendants capacity to appr
fulness of his conduct or to conform h
requirements of law was significantly
so impaired as to constitute a defense

(3) the defendant was under unus
tial duress, although not such duress
defense to the charge;

(4) the defendant is punishable a
defined in section 2(a) of this title) in
was committed by another, but his
relatively minor, although not so minc
a defense to the charge;

(5) the defendant could not reas
seen that his conduct in the course o
of murder, or other offense resulting i
he was convicted, would cause, or wou
risk of causing, death to any person.

(h) Aggravating Factors for Treason
If the defendant is found guilty of or pl
offense under section 794 or section 2381
following aggravating factors shall be co

(1) the defendant has been convic

(2) in the commission of the offer
knowingly created a grave risk of sub
the national security;

(3) in the commission of the offer
knowingly created a grave risk of
person.

(i) Aggravating Factors for Homici
dant is found guilty of or pleads guilty to
for which one of the sentences provided
lowing aggravating factors shall be consi

(1) the defendant—

(A) intentionally killed the v

(B) intentionally inflicted ser
which resulted in the death of th

(C) intentionally participated
he knew or reasonably should ha
create a grave risk of death to a p
one of the participants in the offen
did die as a direct result of the act

(D) attempted to kill the
United States under the circumst
section 1751(c) of this title;

(2) the death or injury resulting
during the commission or attempted
during the immediate flight from the
tempted commission of, an offense
(prisoners in custody of institution o
794 (gathering or delivering defense
foreign government), section 844(d)
explosives in interstate commerce for
section 844(f) (destruction of Govern
explosives), section 844(i) (destructi

(3) the defendant has t
Federal offense, or a State of
of a person, for which a sen
or a sentence of death was

(4) the defendant has pr
two or more State or Fede
a term of imprisonment of
mitted on different occasions
or attempted infliction of, s
another person;

(5) in the commission of
knowingly created a grave ri
persons in addition to the v

(6) the defendant commi
cially heinous, cruel, or depr

(7) the defendant procu
offense by payment, or prom
of pecuniary value;

(8) the defendant comm
eration for the receipt, or in
ceipt, of anything of pecunia

(9) the defendant comm
stantial planning and preme
of a person or commit an ac

(10) the defendant comm

(A) the President
President-elect, the Vice
dent-elect, the Vice-Presi
is no Vice President, th
success to the office of t
States, or any person w
under the Constitution an

(D) a Federal judge, a
officer, or an employee of
correctional institution, wh
duties or because of his st
For purposes of this subse
officer' is a public servant a
Government agency or Co
gage in the prevention, inv
of an offense.

(j) Instruction to Jury on F
Justice Without Discrimination.—
fore a jury under this section, th
jury that in its consideration of
death is justified it shall not con
tional origin, creed, or sex of the
return to the court a certificate s
consideration of race, color, nati
of the defendant was not involv
individual decision.

Sec. 2. Section 34 of title 18
is amended by changing the com
prisonment for life" to a period
der of the section.

Sec. 3. Section 794(a) of tit
Code is amended by changing th
section to a comma and by addi
the words "except that the sente
imposed unless the jury or, if th
further finds that the offense di
weaponry, military spacecraft or
systems, or other means of defe
large-scale attack; war plans; co
or cryptographic information; or

Sec. 5. Section 844
Code is amended by st
section 34 of this title".

Sec. 6. Section 844
Code is amended by st
section 34 of this title".

Sec. 7. The second
title 18 of the United S
follows:

"Whoever is guilty
be punished by death o

Sec. 8. Section 111
Code is amended by str
who is found guilty of
sentenced to imprisonm

Sec. 9. Section 12
Code is amended by ins
in subsection (a) the w
son results, shall be pu
ment".

Sec. 10. The last p
of the United States C
comma after the words
and deleting the remain

Sec. 11. Subsection
the United States Cod
"Whoever attempts to k
nated in subsection (a)
(1) by imprisonment fo
(2) by death or imprisc
life; if the conduct cons
dent of the United State

Sec. 12. The second
1992 of title 18 of the U
changing the comma aft
life" to a period and dele

Sec. 13. Section 203
Code is amended by dele

Sec. 14. Section 2113
Code is amended by stri
death if the verdict of the
in lieu thereof the words
ished by death or life im

Sec. 15. Section 903
1958, as amended (49 U.S
subsection (c).

Sec. 16. The analysi
United States Code is am
the following new item:
"3562A. Sentencing for

Sec. 17. Section 356
Code is amended by addi

"In no event shall a
upon a pregnant woman

Sec. 18. Chapter 23
Code is amended by in
3741 the following new
"§ 3742. Appeal from se

"In any case in whic
under section 3562A of th
be subject to review by
by the defendant. Notice
time prescribed for appe

"On revi
consider the r
the informati
the procedure
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"The cou
that: (1) the
influence of p
tor; and (2)
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3562A. In al
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Sec. 19.
United States
the following
"3742. Appea

Sec. 20.
title 18 of th
shall not app
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Amend
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of death, and